

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Glen F. Wetzel,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

(ECP)
Case 01-10-032

**ADMINISTRATIVE LAW JUDGE'S RULING
REMOVING PROCEEDING FROM COMMISSION CALENDAR**

In its November 20, 2001, answer to the complaint,

Defendant argues:

The Commission has deleted Rule 3.4 General Order No. 133-B. Complainant's cause of action - based on Rule 3.4 - is therefore not sustainable. Pacific has not violated any provision of law or any order or rule of the Commission. The dial tone delay at issue in this Complaint is a function of the analog CPE used by the Complainant. Section 1702 of the Public Utilities Code provides, in part, that a Complaint must set forth:

[A]ny act or thing done, or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

Rule 9 of the Commission's Rule of Practice and Procedure provides in part:

A complaint may be filed any corporation or person, . . . setting forth any act or thing done or omitted to be done by any public utility . . . in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

A complaint will be dismissed if it does not allege that the utility violated a provision of law or order of the Commission. L.J.T. Industries, Inc. and R.H. Mitman v. Pacific Telephone Company, 80 Cal. P.U.C. 836 (1976); Blincoe, et.al. v. Pac. Telephone & Telegraph Co. 60 Cal. P.U.C. 432 (1963).

Since the Complaint does not set forth a cause of action, the Complaint should be dismissed.”

Further, Defendant states that Rule 3.4 of General Order No. 133-B, on which the Complainant relies, was eliminated in Decision 00-03-052. That Decision was an outcome of a Commission-initiated Rulemaking proceeding (R.98-06-029) regarding quality. As that Decision notes, dial tone speed standards are inapplicable to the digital central office equipment now in use throughout California; consequently, Rule 3.4 had become extraneous.

Also, Defendant points out that Complainant may eliminate the dial tone delay he complains about by using digital Customer Premises Equipment (CPE).

Therefore, **IT IS RULED** that:

1. Complainant shall file a written reply to Defendant’s argument that the proceeding should be dismissed for failure to state a violation of any Commission Order or Rule regarding dial tone delay. Complainant’s reply shall be filed no later than Friday, December 21, 2001.
2. Failure to file a timely reply shall be cause for dismissal of the complaint.

3. The hearing scheduled for Thursday, December 13, 2001, is cancelled.

Dated December 4, 2001, at San Francisco, California.

/s/ Bertram D. Patrick
Bertram D. Patrick
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Removing Proceeding from Commission Calendar on all parties of record in this proceeding or their attorneys of record.

Dated December 4, 2001, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

